

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TONI PAUL CAYTON,

Petitioner,

v.

ORDER

08-cv-571-bbc

JOHN BETT, STEVE CASPERSON, GREG GRAMS,
GLEN SINGER, MARDELL PETRAS, DAVID WHITE,
MARK HEISE, MOLLY SULLIVAN, GERALD KONITZER,
DAVID WHITCOMB, GREGORY SMITH, GERALD BERGE,
TRACY GERBER, SGT. ROBERTSON, SGT. McCARN, SGT.
KARTMAN, SGT. ASPERSON, CORRECTIONAL OFFICER
JONES, CAPTAIN GILBERG, SGT. HUIBRETGSE, TIM HAINES,
LT. C. KELLAR, JUDY SCHELKE, JAMES SPANBERG, JANEL
NICKEL, CAPT. BRIAN BANTLEON, THOMAS SPEECH
and DENNIS KAVANAUGH,

Respondents.

On October 3, 2008, I denied petitioner Toni Paul Cayton's request for leave to proceed in forma pauperis because he did not qualify for in forma pauperis status under 28 U.S.C. § 1915(g). On October 23, 2008, I dismissed his case for his refusal to pay the \$350 filing fee. Because petitioner sought to appeal the October 3, 2008 order, I construed his October 15, 2008 motion for reconsideration as a notice of appeal and a request for leave

to proceed in forma pauperis on appeal. I denied his request because three strikes had been recorded against petitioner under 28 U.S.C. § 1915(g). Cayton v. Flynn, 99-C-368 (E.D. Wis. Feb. 24, 2000); Cayton v. Flancher, 99-C-369 (E.D. Wis. Feb. 24, 2000); and Cayton v. Jannis, 99-C-370 (E.D. Wis. Feb. 24, 2000). I told petitioner that he owed the full \$455 fee for filing an appeal immediately and could delay payment for two reasons only: 1) his complete destitution; or 2) if he challenged in the court of appeals within thirty days of the date he received my order the decision to deny his request for leave to proceed in forma pauperis on appeal because of his § 1915(g) status. Fed. R. App. P. 24(a)(5).

On October 29, 2008, petitioner filed a notice of appeal. It appears that petitioner is attempting to ask the court of appeals to decide whether this court erred in denying his request for leave to proceed in forma pauperis on appeal. The appropriate next step is not to file a new appeal but to move in the court of appeals for leave to proceed in forma pauperis in his pending appeal. I will treat petitioner's October 29, 2008 notice of appeal as a motion under Fed. R. App. P. 24(a)(5) and forward it to the court

of appeals for whatever action it wishes to take.

Entered this 3rd day of November, 2008.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge